IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 118 OF 2006
WITH
CIVIL APPLICATION NO. 307 OF 2006

Shri Suryakant Vassu Gurav
Son of Vassu Ladko Gurav,
Gaunthan, Velus, Sattari, Goa. .... Appellant

Versus

Shri Dattaram Narayan Madwal
alias Veluskar, Velus, Sattari,
Presently residing at House No.
279, Behind Kamat Plaza,
Near Ganapati temple, Panaji, Goa. .... Respondent

Shri Virendra R. Parshekar, Advocate for the Appellant.

CORAM : **P.V. KAKADE, J.**

DATE : **5th DECEMBER, 2006**

ORAL ORDER :

Heard the learned Counsel for the appellant. Perused the record.

2. This appeal is directed against the judgment and order passed by the Additional District Judge, Panaji dismissing the appeal and confirming the judgment and decree passed by the trial Court decreeing the plaintiff's suit by order dated 6/12/2003.

3. Perusal of the judgment of both the Courts below shows that the dispute between the parties was regarding landed property. The plaintiff/respondent alleged that the defendant had encroached upon his suit property and was a trespasser in the land and, hence, declaration was sought for his right, title and interest in the suit property and perpetual injunction was sought as a consequential relief.

4. The learned trial Judge after hearing both the parties and on the basis of available evidence on record, came to the conclusion that the plaintiff proved that suit property was granted on emphateusis provisionally to one Esso Rama Madwal amongst other properties, who was the brother of the grandfather of the plaintiff vide alwara no. 824 dated 24/08/1910. It was further held that said property was developed and cultivated by said Esso Rama Madwal till his death and after that the same was possessed and enjoyed by this plaintiff exclusively, peacefully and continuously. It was further held that in the year 1962, bestowal proceeding was initiated and the concession granted was transferred and confirmed in the name of the plaintiff. The defendant/appellant failed to prove his right, title and interest in the suit property, as alleged and suit came to be decreed. The appeal was carried to the District Court. The learned Additional District

Judge after hearing both the parties and on the basis of available evidence on record, confirmed the judgment and decree passed by the trial Court and dismissed the appeal.

Hence, the present appeal.

5. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The question which is sought to be raised is to the effect that whether the suit of the plaintiff for permanent injunction as against the defendant is maintainable at law when by very admission of the plaintiff the defendant was in possession of the suit property on the date of filing of the suit as well as the date of decree of the trial Court? This so called plea of admission by the plaintiff arose when the plaintiff in his cross-examination stated that when he visited the suit property at the relevant time, he had personally seen that the defendant started ploughing operation in the suit property. On the basis of this statement, it was alleged to be admission that defendant was in settled and lawful possession of the suit property.

6. In my considered view, by no stretch of imagination it can be said to be admission, on the other hand it can be a confirmation that

defendant had obstructed the possession of the plaintiff in the suit property, when in the light of other evidence on record, both the Courts have recorded concurrent findings to the effect that plaintiff has right, title and interest in the suit property.

7. Be as it may, the fact remains that there is absolutely no substantial question of law involved in the appeal and, hence, appeal has no merits and stands dismissed in limine. Consequently, civil application no. 307 of 2006 also stands dismissed with no order as to costs.

P.V. KAKADE, J.

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